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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- v. -

MICHAEL R. HENDRIX, et al.

Defendants.

Civ. Action No.

C00-20655 (JW)

ORDER SETTING HEARING  
ON SEC's MOTION FOR  
ORDER APPROVING  
DISTRIBUTION OF FUNDS

**SECURITIES AND EXCHANGE COMMISSION'S STATUS REPORT  
CONCERNING THE DISPOSITION OF FUNDS IN COURT REGISTRY**

Plaintiff Securities and Exchange Commission ("Commission") files this status report concerning the disposition of funds presently in the Registry of the Court.

On March 10, 2008, the Commission filed a motion for an Order directing payment of approximately \$883,000 from the court registry to the United States Treasury on the grounds that returning these funds to investors through a Court-ordered Distribution Plan likely would not be

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1 economically feasible, in light of the estimated per-share return and the perceived difficulty of  
2 locating investors and verifying claims more than twelve years after the illegal trading.<sup>1</sup>

3  
4 On April 18, 2008, the Court denied the Commission's motion. In denying the  
5 Commission's motion, the Court compared this matter to another case, *SEC v. Ungermann*, in  
6 which the Commission sought appointment of a distribution agent.<sup>2</sup> The Court compared the  
7 amount of time that had passed, the funds available for distribution, and the likely return per  
8 share to investors in *Ungermann* and in this case. The Court explained that without supporting  
9 evidence to distinguish the two cases, it was not clear why one case was suitable for appointment  
10 of a Distribution Agent and the other was not.

11  
12 In response to the Court's Order, the Commission's staff obtained trading data in this  
13 case, reviewed it in an effort to determine its completeness, and consulted both internally and  
14 with three outside professionals who have each served as a Distribution Agent and/or Receiver in  
15 multiple cases. See Declaration of Michael S. Fuchs (hereinafter "Decl."), attached hereto as  
16 Exhibit A, at ¶¶ 1, 2. Each of the agents previously served as a distribution agent or receiver in  
17  
18

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19 <sup>1</sup> As explained in the Commission's Motion, the approximately \$883,000 represents disgorged trading profits  
20 paid by the Defendants in this case, plus accrued interest. The Commission's complaint alleged that the Defendants  
21 engaged in insider trading in the securities of Xylogix, Inc. prior to a September 1995 public announcement that  
Xylogix would be acquired by Bay Networks, Inc. The Court entered judgments enjoining Defendants from future  
violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and ordering them to  
pay varying amounts of disgorgement, prejudgment interest, and civil penalties.

22 <sup>2</sup> The Court's Order directed the Commission to file a certification by May 23, 2008 explaining why the  
23 Court should not appoint a distribution agent in this matter. The Order further said that if the certificate was  
24 sufficiently supported by a declaration, the Court would consider vacating an Order to Show Cause Hearing now  
scheduled for June 9, 2008 and approving the Commission's Motion for Payment to the Treasury.

1 multiple SEC cases. The staff provided these agents with relevant information related to this  
2 case. Decl., ¶ 2.

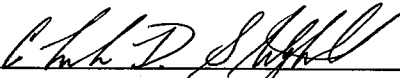
3 After considering the information provided by the staff, each of the distribution agents  
4 opined that a distribution in this case was economically feasible. At the staff's request, the three  
5 distribution agents submitted formal bid letters offering to serve as the Distribution Agent in this  
6 case, the last of which was received on May 20, 2008. Decl., ¶¶ 3, 4.

7 In consideration of the Court's Order and based on this new information, the  
8 Commission's staff has reconsidered its initial recommendation that the disgorged funds be paid  
9 to the U.S. Treasury. Instead, the Commission now intends to draft a plan for the Court's  
10 consideration that would appoint an agent to distribute these funds from the court registry to  
11 harmed investors. The Commission intends to file a proposed Distribution Plan for the Court's  
12 consideration by June 30, 2008.

13 If the Court approves of the approach outlined herein, the Commission staff will,  
14 pursuant to Commission procedures, evaluate the potential distribution agents who have  
15 submitted bids and recommend a distribution agent for consideration by and subject to Court  
16 approval. Decl., ¶¶ 4, 5.

1 For the foregoing reasons, the Commission requests that the Court vacate the hearing  
2 scheduled for June 9, 2008.

3  
4 Respectfully submitted,

5  
6 

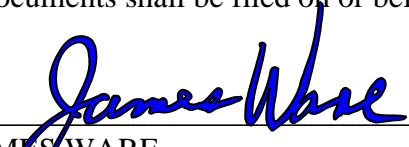
7 Charles D. Stodghill  
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15 Dated: May 22, 2008

16 \*\*\* ORDER \*\*\*

17 Pursuant to the SEC representations' above, the Court VACATES the hearing on the Order to  
18 Show Cause currently set for June 9, 2008. The Court sets a hearing on the SEC's anticipated Motion  
19 for Order of Approving Distribution of Funds and Appointment of Distribution Agent for **July 7, 2008**  
20 **at 9 a.m.** The motion and its supporting documents shall be filed on or before **June 30, 2008.**

21 Dated: June 2, 2008

22   
23 JAMES WARE  
24 United States District Judge  
25  
26  
27  
28

**EXHIBIT A**

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

**SECURITIES AND EXCHANGE COMMISSION,**  
**Plaintiff,**

**- v. -**

**MICHAEL R. HENDRIX, DOUGLAS S. SAWAMURA,**  
**JEFFREY S. SUMMERLIN, JAMES A.S. LEWIS,**  
**CRAIG A. LARREW, SAN H. MAI, BICH THI**  
**HOANG, LINH NGOC VU, NICK S. PARK,**  
**JOHN H. OH, TIMOTHY J. HELMS and**  
**RAYMOND L. HELMS,**

**Defendants.**

**Civ. Action No.**  
**C00-20655 (JW)**

**DECLARATION OF MICHAEL S. FUCHS IN SUPPORT OF**  
**SECURITIES AND EXCHANGE COMMISSION'S STATUS REPORT**  
**CONCERNING THE DISPOSITION OF FUNDS IN COURT REGISTRY**

I am an attorney admitted to the bars of the District of Columbia and the Commonwealth  
of Virginia. I am employed as a Branch Chief by the Securities and Exchange Commission

DECLARATION OF MICHAEL S. FUCHS IN SUPPORT OF  
SECURITIES AND COMMISSION'S STATUS REPORT  
Civil Action No. C 00-20655(JW)

1 ("Commission") in the Division of Enforcement at the Commission's headquarters in  
2 Washington, D.C., where I have worked since February 1995. This Declaration is based on  
3 information obtained through my direct participation in the disposition of the funds in the  
4 Registry of the Court in this matter.  
5

6 1. In light of the Court's Order denying the Commission's motion to transfer the  
7 funds to the United States Treasury, my supervisor and I discussed this matter with staff in the  
8 Commission's Office of Market Surveillance, who determined that data reflecting relevant  
9 trading in the common stock of Xylogics, Inc. from September 1995 was still available, though  
10 possibly not 100 percent complete.  
11

12 2. We also consulted with the Commission staff currently handling the distribution  
13 in *SEC v. Ungermann*. In addition, we contacted three different distribution agents to determine  
14 if they believed that the funds in the court registry could be returned to investors in a cost-  
15 effective manner. All three agents have served as a distribution agent or a receiver in multiple  
16 SEC cases. My supervisor and I had several conversations with each distribution agent to inform  
17 them of the relevant details concerning a possible distribution. One of the distribution agents  
18 reviewed the trading data pursuant to a confidentiality agreement.  
19

20 3. After reviewing the relevant information, the distribution agents contacted by the  
21 staff informed us that they believed that the funds held in the Court Registry could be returned to  
22 investors in a cost-effective manner. In so doing, they orally provided us with the general  
23 contours of a possible distribution plan and the approximate costs of implementing that plan.  
24

25 - 2 -

26 DECLARATION OF MICHAEL S. FUCHS IN SUPPORT OF  
27 SECURITIES AND COMMISSION'S STATUS REPORT  
28 Civil Action No. C 00-20655(JW)

1           4.     In response to the staff's request, each agent provided us with a formal bid letter  
2 to serve as distribution agent in this matter. The last of those bid letters was received in our  
3 offices on May 20, 2008. If the Court approves the approach outlined herein, the staff, pursuant  
4 to the Commission's procedures, will assess these bids and select a distribution agent for  
5 consideration by and subject to Court approval.  
6

7           5.     I have begun drafting a distribution plan, which we believe could be presented to  
8 the Court for approval by June 30, 2008.

9           Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
10 and correct.  
11

12           Executed on May 22, 2008 in Washington, D.C.

13  
14 

15           \_\_\_\_\_  
Michael S. Fuchs